

HRBDT Project & OHCHR

Expert meeting on the technology sector and access to remedy through non-State-based grievance mechanisms

Summary Report

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[Hotel Africa](#) | 50 Ave Habib Bourguiba, Tunis 1001, Tunisia

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Introduction

On 11 June 2019, the Human Rights, Big Data and Technology Project (HRBDT) and the Office of the High Commissioner for Human Rights (OHCHR) organized an expert meeting in Tunis to explore issues related to the technology sector and access to effective remedy through the use of non-State-based grievance mechanisms. This was part of the larger OHCHR Accountability and Remedy Project (ARP III) consultation on Enhancing effectiveness of non-State-based grievance mechanisms in cases of business-related human rights abuse. The meeting was attended by 30 individuals representing a wide range of international stakeholders including businesses, civil society, international organizations and academics. The discussions will feed into OHCHR's Accountability and Remedy Project and its newly established project on business and technology, B-Tech. The following provides a summary of points raised at the meeting which was held under Chatham House Rule.

Background

The UN Guiding Principles on Business and Human Rights (UNGPs) are the authoritative, global, normative framework outlining the obligations of States and responsibilities of business enterprises to avoid and address adverse human rights impacts related to business activity. This framework is comprised of three pillars, the third of which focuses on the need for those who allege that their human rights have been affected to have access to effective remedy.

The third pillar refers to three categories of grievance mechanisms through which complainants can seek redress:

1. **State-based judicial mechanisms** (recognized as being at the core of access to remedy);
2. **State-based non-judicial grievance mechanisms**; and
3. **Non-State-based grievance mechanisms**.

State-based judicial and non-judicial grievance mechanisms should form the foundation of a wider system of remedy. Within such a system, non-State-based grievance mechanisms can play an important role. For instance, operational-level grievance mechanisms of companies can make it possible for grievances to be addressed and for adverse impacts to be remediated quickly and directly by the companies, thereby preventing harms from compounding and grievances from escalating.

To make it possible for grievances to be addressed early and remediated directly, the UNGPs call on companies to “establish or participate in” effective operational-level grievance mechanisms. The UNGPs also consider the use of other non-State-based grievance mechanisms, such as multi-stakeholder or other collaborative initiatives, as important means through which companies can meet their responsibility to respect human rights.

Session 1: Mapping private grievance mechanisms in the tech sector

The first session revolved around mapping private grievance mechanisms in the tech sector. Questions within this session included:

1. To what extent do technology companies administer or participate in private grievance mechanisms?
2. What models of grievance mechanisms do technology companies use? What innovations have been tried or are in the pipeline?

One of the participants observed that grievance mechanisms can fall into two broad categories. The first model is a complaint mechanism which only deals with a particular action taken by a company, such as when content on a social media platform is moderated or taken down by the platform. The participant noted that the advantage of such a mechanism is that the complaint may be dealt with more quickly by the company due to the specificity of the complaint and the complaint mechanism. The downside, however, is that the narrow focus of the complaint mechanism may mean that some dimensions of the complaint may be excluded. Participants noted that in such situations companies with such grievance mechanisms may not have other grievance mechanisms that can deal with the other dimensions to the complaint and may often fail to offer or direct a complainant to other pathways to reporting other types of violations.

The second model is a broader form of grievance mechanism in which a singular tool or space, such as a webpage, exists for users to submit any type of complaint to a company about its products and services. This is more flexible and allows a broader set of concerns to be captured. However, participants noted that it may not be easily accessible or as user friendly as specific complaint mechanisms targeted and integrated into one product or service.

One issue raised was the lack of understanding of what the expectations for providing an effective remedy are on companies. For example, the question was raised whether it is possible to have one holistic grievance mechanism or whether different forms of grievance mechanisms are needed to address the variety and diversity of products and services of different scale that a singular company provides. Companies are focusing on different user experiences, but with the variety of products and services that they offer, some company representatives noted that when it comes to the approach to

effective remedies, one size may not fit all. There is a clear demand from companies for clarity and guidance on what the expectations on companies are when it comes to providing effective remedy. Some participants also observed that there is a clear benefit of working and engaging with other stakeholders in the industry to find solutions. One proposal, for example, was to enable industry wide complaint mechanisms enforced by an industry regulator in addition to, or rather than, internal company mechanisms.

On the topic of accessibility for users and affected individuals and groups as well as to increase transparency, participants noted that companies can make available information on their policies and grievance mechanisms on their websites and on webpages of their affiliated networks.

Participants also highlighted a mutual discovery problem that affects the ability to make complaints. As a user, how do I discover that I am unhappy with a service? How do I know that my data has been misused or that my human rights have been affected in other ways? How do business enterprises discover that users are unhappy and have broader concerns?

Another topic that emerged was that of classifying and categorising complaints and harm. Some company participants noted that they receive very few human rights complaints per year and many times they consider these to not be human rights concerns. Some participants noted, however, that the burden of having to classify complaints and harms should not be on the user alone. Businesses should be able to clearly identify and categorise the issues raised by users and use a human rights framework to assess the types of complaints.

Session 2: Issues involving private grievance mechanisms in the tech sector

This session focused on features that make the technology sector unique and the specific challenges companies face in this space. The discussion centred on the following questions:

1. What kinds of human rights issues are people raising with technology companies through private grievance mechanisms? And how are companies responding?
2. How well are technology companies responding to the challenges set out in the UN Guiding Principles as regards access to remedy for human rights-related harms? What has been done so far? What still needs to be done?
3. Have there been sectoral or geographical variations in the way technology companies are responding? If so, what is driving these variations?

The session began with a brief presentation of the challenges unique to the technology sector. The importance of strategic litigation by civil society was brought up as a way to more clearly identify human rights harms. An issue that was raised was the lack of transparency of processes within companies and their procedures both in terms of how they identify and act upon harms and in relation to how individuals affected are notified and are able to complain about any potential harms to them. Additionally, many companies operating in countries that are not adhering to international human rights law are facing challenges. They may decide to comply with national laws rather than adhere to international human rights law.

From the perspective of the MENA and Africa region, participants observed that social media platforms are often not accessible enough for users and there should be clearer indication of how users can lodge a complaint. Language and literacy barriers should also not be underestimated, and diversity must also be more deeply embedded in approaches to be more inclusive and proactive. Understanding terms of service and grievance mechanisms should not only be available for people with extensive IT knowledge. There should also be ways of providing security and safety of users submitting a complaint, especially in countries with restrictive governments and internet monitoring. Processes may not be able to be uniform and standardised globally but rather may require special attention in certain areas in the world to ensure the protection of the most vulnerable and consider local contexts.

Several participants discussed the challenge of identifying harms and putting in place adequate mechanisms. The use of an ombudsperson in designing responses was discussed. The vast scale of impact of the tech products and services must also be considered when considering grievance mechanisms as well as the use of tech and AI within grievance mechanisms itself such as chatbots for example. Some companies are already employing chatbots within their complaint mechanisms and these are also often used in their sales front. How does this affect potential processes?

As in the first session, the point was made again that some users may be unaware that their rights have been violated. Work also needs to be done to educate users in general on human rights harms in association with the use and engagement with tech and the online space. This should however not be a burden on the user.

Participants also discussed what the sequencing of a complaint mechanisms looks like. The question of accountability is one that was highlighted with regard to understanding the harms and who may be responsible for remediation of a human rights violation. The interplay with regulation and regulators is a crucial part of this. The merging of public and private spheres and public and private functions is also something to consider. For example, regulators can see content moderation as a function to outsource to companies who are not accountable in the same way states are. Related to this was a discussion on whether there is a difference between privacy and freedom of expression concerns, noting that some in the room may be more comfortable with governments being involved to enforce privacy rights than having governments involved in dictating what remedy should be in place for freedom of expression infringements. With regard to accountability it was also questioned what the responsibility of third parties is, as this is something that is rarely discussed. Understanding the scope of responsibility is a crucial element of these providing adequate remedy.

Session 3: Looking beyond individual companies

The third and final session of the expert meeting was focused on looking beyond individual companies and rather looking at the technology sector as a whole. The following were the guiding questions for the session:

1. What collaborative initiatives are in place to provide remedies to affected people, to help companies identify systemic or industry-wide problems, or to formulate joint responses to broader challenges? How well are these working? What still needs to be done?
2. What is the role of State regulation in supporting remedial efforts by technology companies? In what ways and circumstances can State regulation provide drivers for change?

The discussion began with a focus on smart cities and cooperative models. Key questions arising from these were who would need to be part of this model and what regulatory framework such a model would be subject to. A participant noted that an issue with smart cities is that many times those cities do not have data protection policies in place for creating such a vast data ecosystem. Data without adequate regulation can be a great risk to human rights. The notion of harms and understanding harms in these contexts was raised especially for those individuals who do not know that they have been affected. It was noted that especially because users are many times not aware of the harms that have occurred collaborative networks of companies and activists can be beneficial to communicate possible risks and to regulating bodies. Coherence across industry can also be a big benefit to acknowledging harms and putting in place effective grievance mechanisms.

It was noted that there is a willingness among technology companies to learn from each other particularly through multi-stakeholder initiatives (MSIs). It is however not only technology companies that should be involved in this knowledge sharing. Many companies outside the technology sector use technology and big data analytics and should be involved because the harms can be similar and effective remedy must still be provided.

A range of views were expressed when it came to the topic of cooperation between companies and States such as with data sharing or providing certain products or services. Several participants noted the difference of speaking of a cooperation between democratic, human rights compliant states, and others, noting that it may be more advisable to have collaborations with states with strong human rights commitments rather than states with weaker human rights commitments. Other participants however noted that both advantages and risks can result from these public private collaborations in all settings and not only with states with weak human rights commitments.

Another question revolved around the kinds of collaboration that participants wanted to see when addressing systematic issues. NGOs have served as trusted points of contact for companies and should increasingly be involved. Human Rights defenders should also play a large part in this. From an NGO perspective it is many times also a capacity question to be able to engage with companies. There is a need for extensive education about harms and remedies, however fatigue issues are a clear reality. Employees within big technology companies can also play a role in shaping policies. The importance of using human rights language and a human rights based approach in internal and external processes as well as communication were emphasised at this point again.

This meeting was organised by the HRBDT and OHCHR

The Human Rights, Big Data and Technology Project (HRBDT) at the University of Essex identifies the risks and opportunities for human rights posed by big data and new technologies, including artificial intelligence applications. It proposes solutions to ensure that new and emerging technologies are designed, developed, deployed and regulated in a way that is enabling of, rather than threatening to, human rights. HRBDT's research assesses the adequacy of existing ethical and regulatory approaches to big data and artificial intelligence from a human rights perspective. Its research also demonstrates how human rights standards are capable of adapting, and offering solutions to, rapidly evolving technological landscapes.

The Office of the UN High Commissioner for Human Rights (OHCHR) is the leading UN entity on human rights and has a mandate to promote the UN Guiding Principles on Business and Human Rights (UNGPs). Its Accountability and Remedy Project (which has been mandated by the UN Human Rights Council) is a process aimed at strengthening the third pillar of the UNGPs relating to access to remedy. The third, and current, phase of the project (ARP III) focuses on enhancing the effectiveness of non-State-based grievance mechanisms in cases of business-related human rights abuse.

Contact information:

Should you wish to provide comments or further information for this consultation please feel free to contact us.

HRBDT hrbdt@essex.ac.uk

OHCHR and ARP III business-access2remedy@ohchr.org